

ORDER NO. 3770

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Mark Acton, Vice Chairman;  
Tony Hammond; and  
Nanci E. Langley

Competitive Product Prices	Docket No. MC2014-8
Priority Mail	
Priority Mail Contract 70	

Competitive Product Prices	Docket No. CP2014-9
Priority Mail Contract 70 (MC2014-8)	
Negotiated Service Agreement	

Competitive Product Prices	Docket No. MC2015-27
Priority Mail	
Priority Mail Contract 108	

Competitive Product Prices	Docket No. CP2015-36
Priority Mail Contract 108 (MC2015-27)	
Negotiated Service Agreement	

Competitive Product Prices	Docket No. MC2015-28
Priority Mail	
Priority Mail Contract 109	

Competitive Product Prices	Docket No. CP2015-37
Priority Mail Contract 109 (MC2015-28)	
Negotiated Service Agreement	

Competitive Product Prices	Docket No. MC2015-61
Priority Mail	
Priority Mail Contract 128	

Competitive Product Prices  
Priority Mail Contract 128 (MC2015-61)  
Negotiated Service Agreement

Docket No. CP2015-92

Competitive Product Prices  
Priority Mail  
Priority Mail Contract 135

Docket No. MC2015-71

Competitive Product Prices  
Priority Mail Contract 135 (MC2015-71)  
Negotiated Service Agreement

Docket No. CP2015-109

## ORDER REQUIRING NOTICE OF TERMINATION AND CERTIFICATION

(Issued February 2, 2017)

On December 29, 2016, the Postal Service filed its Annual Compliance Report (ACR) before the Commission.<sup>1</sup> In the ACR, the Postal Service reported that five domestic competitive negotiated service agreements (NSAs) that did not cover their attributable costs for FY 2016 have either already expired or have been terminated during FY 2016. FY 2016 ACR at 86. Chairman's Information Request No. 6 requested contract names and docket numbers for those five domestic competitive NSAs.<sup>2</sup> The Postal Service identified the following contracts as the five referenced domestic competitive NSAs: Priority Mail Contract 70, Priority Mail Contract 108, Priority Mail Contract 109, Priority Mail Contract 128, and Priority Mail Contract 135.<sup>3</sup> The contract names, docket numbers, and expiration dates are provided below in Table 1.

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<sup>1</sup> Docket No. ACR2016, United States Postal Service FY 2016 Annual Compliance Report, December 29, 2016 (FY 2016 ACR).

<sup>2</sup> Docket No. ACR2016, Chairman's Information Request No. 6, January 13, 2017, question 7a (CHIR No. 6).

<sup>3</sup> Docket No. ACR2016, Responses of the United States Postal Service to Questions 1-7 of Chairman's Information Request No. 6, January 23, 2017, question 7a (Responses to CHIR No. 6).

**Table 1<sup>4</sup>**

<b>Contract Name</b>	<b>Docket Nos.</b>	<b>Expiration Date</b>
Priority Mail Contract 70	MC2014-8/CP2014-9	December 4, 2016
Priority Mail Contract 108	MC2015-27/CP2015-36	February 12, 2018
Priority Mail Contract 109	MC2015-28/CP2015-37	February 22, 2018
Priority Mail Contract 128	MC2015-61/CP2015-92	July 16, 2018
Priority Mail Contract 135	MC2015-71/CP2015-109	August 4, 2018

For the domestic competitive NSAs that the Postal Service or its contracting partner terminated in FY 2016, CHIR No. 6 requested the notice of termination that the Postal Service filed in the relevant docket. CHIR No. 6, question 7a. In its response, the Postal Service stated that “[c]onsistent with past practice, a separate notice of termination was not filed in each of these five contract dockets....” Responses to CHIR No. 6, question 7a. The Postal Service did not cite any authority supporting its “past practice.”

As noted in Table 1, none of the five contracts’ expiration dates were in FY 2016. Accordingly, if these contracts ended in FY 2016, it appears that the NSAs terminated prior to the scheduled expiration dates. When the Commission approved each of these NSAs, it ordered the Postal Service to notify the Commission if the contract terminated prior to the scheduled expiration date.<sup>5</sup> Moreover, when the Commission approved amendments to two of these NSAs, Priority Mail Contract 70 and Priority Mail Contract 128, the Commission reiterated the requirement that the Postal Service notify the

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<sup>4</sup> Mail Classification Schedule section 2505.5 (revised as of October 31, 2016).

<sup>5</sup> Docket Nos. MC2014-8 and CP2014-9, Order No. 1897, Order Adding Priority Mail Contract 70 to the Competitive Product List, December 3, 2013, at 5, 6; Docket Nos. MC2015-27 and CP2015-36, Order No. 2353, Order Adding Priority Mail Contract 108 to the Competitive Product List, February 11, 2015, at 6, 7; Docket Nos. MC2015-28 and CP2015-37, Order No. 2362, Order Adding Priority Mail Contract 109 to the Competitive Product List, February 20, 2015, at 7; Docket Nos. MC2015-61 and CP2015-92, Order No. 2592, Order Adding Priority Mail Contract 128 to the Competitive Product List, July 16, 2015, at 6, 7; and Docket Nos. MC2015-71 and CP2015-109, Order No. 2636, Order Adding Priority Mail Contract 135 to the Competitive Product List, August 4, 2015, at 6.

Commission if the contract, as amended, terminated prior to the scheduled expiration date.<sup>6</sup>

This notification requirement is not unique to these five domestic competitive NSAs. Rather, the requirement is present in Commission orders approving domestic competitive NSAs beginning with Express Mail and Priority Mail Contract 3.<sup>7</sup> As stated in early Commission orders approving domestic competitive NSAs, once notified of a contract's termination date, the Commission then would remove the contract from the Mail Classification Schedule (MCS) at the earliest possible opportunity.<sup>8</sup>

Keeping an accurate and up-to-date MCS is a priority for the Commission. The requirement that the Postal Service notify the Commission when a domestic competitive NSA terminates prior to the scheduled expiration date is critical to ensuring the MCS accurately reflects the Postal Service's current offerings. Accordingly, the Commission requires that by February 16, 2017, the Postal Service file a notice of termination in the appropriate dockets for each domestic competitive NSA identified in Responses to CHIR No. 6, question 7a. The notice of termination shall include the early termination date.

Furthermore, it appears the Postal Service has only identified domestic competitive NSAs that did not cover their attributable costs for FY 2016 and expired or were terminated during FY 2016. However, when the Commission requested notices of

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<sup>6</sup> Docket No. CP2014-9, Order No. 2013, Order Approving Amendment to Priority Mail Contract 70 Negotiated Service Agreement, March 10, 2014, at 3, 4; Docket No. CP2014-9, Order No. 2125, Order Approving Amendment to Priority Mail Contract 70 Negotiated Service Agreement, July 15, 2014, at 4; and Docket No. CP2015-92, Order No. 2806, Order Approving Amendment to Priority Mail Negotiated Service Agreement, November 6, 2015, at 3, 4.

<sup>7</sup> Docket Nos. MC2009-13 and CP2009-17, Order No. 172, Order Concerning Express Mail & Priority Mail Contract 3 Negotiated Service Agreement, January 16, 2009, at 6 ("The Postal Service shall promptly notify the Commission if the contract terminates, earlier than 3 years from the effective date of the contract.").

<sup>8</sup> See, e.g., Docket Nos. MC2008-8 and CP2008-26, Order No. 116, Order Concerning Priority Mail Contract 1 Negotiated Service Agreement, October 15, 2008, at 5; Docket Nos. MC2009-1 and CP2009-2, Order No. 128, Order Concerning Parcel Return Service Contract 1 Negotiated Service Agreement, November 6, 2008, at 6; and Docket Nos. MC2009-2 and CP2009-3, Order No. 129, Order Concerning Priority Mail Contract 2 Negotiated Service Agreement, November 7, 2008, at 6.

termination for each terminated domestic competitive NSA in these dockets, the Postal Service responded that “[c]onsistent with past practice, a separate notice of termination was not filed....” Responses to CHIR No. 6, question 7a. This raises a concern that the Postal Service’s failure to file notices of early termination as required by Commission orders in domestic competitive NSA cases may be more widespread. As a result, by February 16, 2017, the Commission directs the Postal Service to file a notice in these dockets stating the steps the Postal Service will take to ensure it complies with Commission reporting requirements for domestic competitive NSAs.

In addition, in order to ensure the Postal Service has complied with the Commission’s orders and to promote accuracy of the MCS, by February 16, 2017, the Postal Service shall file a certification in these dockets signed by a senior manager in the appropriate department stating that the manager has reviewed the domestic competitive NSAs currently listed in the MCS. This certification shall identify any additional domestic competitive NSAs listed in the MCS that were terminated prior to the contract’s scheduled expiration date. For those domestic competitive NSAs that the Postal Service or its contracting partner terminated prior to the contract’s expiration date, the Postal Service shall file a notice of termination in the relevant docket(s) and provide the early termination date.

*It is ordered:*

1. By February 16, 2017, the Postal Service shall file a notice of termination for each domestic competitive negotiated service agreement identified in Docket No. ACR2016, Responses of the United States Postal Service to Questions 1-7 of Chairman’s Information Request No. 6, January 23, 2017, question 7a. The notice of termination shall include the early termination date and be filed in the appropriate dockets.
2. By February 16, 2017, the Postal Service shall file a certification in these dockets signed by a senior manager in the appropriate department stating that the

manager has reviewed the domestic competitive NSAs currently listed in the Mail Classification Schedule. This certification shall identify any additional domestic competitive NSAs listed in the Mail Classification Schedule that were terminated prior to the contract's expiration date. For those domestic competitive NSAs that the Postal Service or its contracting partner terminated prior to the contract's scheduled expiration date, the Postal Service shall file a notice of termination in the relevant docket(s) that includes the early termination date.

3. By February 16, 2017, the Postal Service shall file a notice in these dockets stating the steps the Postal Service will take to ensure it complies with Commission reporting requirements for domestic competitive NSAs.

By the Commission.

Stacy L. Ruble  
Secretary